

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Sealand Services, Inc.
GMDSS Station KIRF
Aboard the Vessel *SS Sealand Hawaii*

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File No. 99-SJ-023

NAL/Acct. No. 915SJ0001**FORFEITURE ORDER****Adopted:** March 9, 2000**Released:** March 10, 2000

By the Chief, Enforcement Bureau:

1. In this order, we issue a monetary forfeiture in the amount of \$10,000 against Sealand Services, Inc. ("Sealand") for violation of Section 362(b) of the Communications Act of 1934, as amended ("Act"), 47 U.S.C. § 360(b), and Section 80.1067(a) of the Commission's Rules ("Rules"), 47 C.F.R. § 80.1067(a). The noted violation involves navigation of the vessel *SS Sealand Hawaii* ("Sealand") without the required annual inspection of its Global Maritime Distress and Safety System ("GMDSS") radio station.

2. On March 29, 1999, the Commission's San Juan, Puerto Rico, Resident Agent Office issued a Notice of Apparent Liability ("NAL") in the amount of \$20,000 to Sealand for the noted violation. Sealand filed a response to the NAL requesting cancellation or reduction of the forfeiture. For the reasons discussed below, we reduce the forfeiture amount to \$10,000.

BACKGROUND

3. On February 26, 1999, an FCC agent ("Agent") from the San Juan Resident Agent Office conducted an inspection¹ of GMDSS radio station KIRF aboard the *Sealand*, a 21,150 ton cargo vessel. During inspection, the Agent found no technical deficiencies. However, the required Safety Certificate, certifying that the vessel's radio apparatus had passed the required annual inspection, was not available at the time of the inspection. Following the inspection, Sealand sent the Agent a facsimile of a Safety Certificate which had expired on October 4, 1998, and stated that it was the most recent Safety Certificate that had been issued to it.

4. On March 4, 1999, the Agent issued an Official Notice of Violation ("NOV") to Sealand for violation of Section 362(b) of the Act and Section 80.1067(a) of the Rules. In its March 12, 1999, response to the NOV, Sealand submitted a copy of a new Safety Certificate for the *Sealand* issued on March 12, 1999, and, as requested by the NOV, provided a copy of the vessel's radio station log for the period from October 4, 1998, to March 3, 1999.

¹ Although the required annual inspections of GMDSS radio installations aboard vessels subject to the provisions of Title III, Part II, of the Act have been privatized, the FCC conducts spot-check inspections, such as the inspection in this case, to monitor compliance.

5. Analysis of the Sealand radio station log indicates that the vessel left port at least four times between October 4, 1998, and March 3, 1999. These departures included: October 10, 1998, from San Juan, Puerto Rico; October 11, 1998, from Rio Haina, Dominican Republic; October 14, 1998, from Elizabeth, New Jersey; and October 19, 1998, from Rio Haina, Dominican Republic. On each of these departures, the Sealand was navigated without a current Safety Certificate.

6. On March 29, 1999, the San Juan Resident Agent Office, pursuant to Section 364(a) of the Act, 47 U.S.C. § 362(a), issued the subject NAL to Sealand for navigating without a valid Safety Certificate, in violation of Section 362(b) of the Act and Section 80.1067(a) of the Rules. In Sealand's April 22, 1999, response to the NAL, Sealand requests mitigation of the forfeiture amount and states that: the master and crew of the Sealand believed that a Safety Certificate was no longer required; Sealand remedied the certificate violation as soon as possible after its discovery; Sealand is establishing a procedure to ensure that certificate violations will not occur in the future; and it is rare for Sealand, which operates almost 40 U.S. flag vessels, to miss the renewal of a Safety Certificate.

DISCUSSION

7. As the NAL explicitly states, the forfeiture amount in this case was assessed in accordance with Section 364(a) of the Act, Section 1.80 of the Rules, and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, FCC 99-407, (rel. Dec. 28, 1999) ("*Policy Statement*"). Section 1.80(b)(4) of the Commissions Rules, 47 C.F.R. § 1.80(b)(4), requires that the Commission, in examining Sealand's response, take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.

8. Under Section 351 of the Act, 47 U.S.C. § 351, vessels of 300 gross tons or more are subject to the provisions of Title III, Part II, of the Act. The Sealand displaces 21,150 tons and therefore is subject to those provisions. Section 362(b) of the Act and Section 80.1067(a) of the Rules require that every vessel which is subject to the provisions of Title III, Part II, of the Act have its GMDSS station inspected at least once a year. In the instant case, Sealand admits that it navigated the Sealand in violation of Section 362(b) of the Act and Section 80.1067(a) of the Rules. Under Section 364(a) of the Act, each departure from port or day of navigation constitutes a separate violation. The *Policy Statement* prescribes a base amount of \$5,500 for forfeitures imposed pursuant to Section 364(a) of the Act.

9. We have examined Sealand's response to the NAL in light of the factors specified in the *Policy Statement* and in Section 1.80(b)(4) of the Rules. The master's and crew's ignorance of the certification requirement does not excuse or mitigate Sealand's violations. *See, eg. J.B. Communications of Baltimore, Ltd.*, 49 FCC 2d 412 (1974). The fact that Sealand took corrective action also does not mitigate its violations. *See generally KGV L, Inc.*, 42 FCC 2d 258, 259 (1973) (subsequent corrective action will not excuse past violations). Moreover, Sealand's assertion that its certificate violations are "rare" does not provide a basis for mitigation.

10. Sealand's navigation on at least four occasions with an expired Safety Certificate and Sealand's failure to obtain a new certificate until more than five months after expiration of the old

certificate is a serious offense. However, we will reduce the \$20,000 forfeiture amount to \$10,000 because the Sealand's radio station had no technical deficiencies and, therefore, did not jeopardize the safety of life.

11. Taking into account all of the factors required by the *Policy Statement* and Section 1.80 of the Rules including but not limited to those discussed above, we conclude that the appropriate forfeiture amount is \$10,000. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 364(a) of the Act, Sections 0.111, 0.311 and 1.80 of the Rules, 47 C.F.R. §§ 0.111, 0.311 and 1.80, and the Commission's *Policy Statement*, Sealand Services, Inc., **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$10,000 for the willful violation of Section 362(b) of the Act and Section 80.1067(a) of the Rules.

12. Payment of the forfeiture shall be made in the manner provided in Section 1.80(f) of the Rules, 47 C.F.R. § 1.80(f), within thirty (30) days of the release of this Forfeiture Order. Payment of the forfeiture may be made by credit card through the Commission's Credit and Debt Management Center at (202) 418-1995 or by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. number referenced above. Requests for full payment under installment plans should be sent to: Chief, Credit and Debt Management Center, 445 12th Street, S.W., Washington, D.C. 20554. Petitions for reconsideration filed pursuant to Section 1.106 of the Rules, 47 C.F.R. § 1.106, or applications for review filed pursuant to Section 1.115 of the Rules, 47 C.F.R. § 1.115, must be received by the Commission within thirty (30) days of the release of this order at the following address: Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554, ATTN: Technical & Public Safety Division, Enforcement Bureau. Forfeiture penalties not paid within thirty (30) days may be referred to the U.S. Attorney for recovery in a civil suit. 47 U.S.C. § 504(a).

13. **IT IS FURTHER ORDERED** that a copy of this order shall be sent by certified mail, return receipt requested, to Sealand Services, Inc., 2721 Discovery Drive, Raleigh, North Carolina 27604.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau